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**In the Supreme Court of the United States.**

OCTOBER TERM, 1897.

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ELLIS H. ROBERTS, TREASURER OF  
the United States, appellant and  
petitioner,

v.

THE UNITED STATES EX REL. MARIE  
A. Valentine.

No. .

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PETITION FOR A WRIT OF CERTIORARI TO THE COURT OF  
APPEALS FOR THE DISTRICT OF COLUMBIA.

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Comes now the Solicitor-General on behalf of the appellant and petitioner, Ellis H. Roberts, Treasurer of the United States, and respectfully prays for a writ of certiorari to require the above-entitled cause to be certified to this court for review and determination pursuant to the act of March 3, 1897 (29 Stats., 692).

1. A petition for a writ of mandamus was filed in the supreme court of the District of Columbia against Ellis H. Roberts, praying that he be required to pay to the

relator, Marie A. Valentine, pursuant to the act of Congress approved August 13, 1894, the interest on certain board of audit certificates, one, No. 19,249, for \$19,616.25 and another, No. 8,879, for \$909.40, at the rate of 2.35 per cent per annum from the date of said certificates, to wit, August 1, 1874, up to the date of the approval of the act of Congress providing for the redemption, to wit, June 16, 1880, together with costs of suit; upon which petition judgment was rendered awarding the writ on March 21, 1898. On appeal taken to the court of appeals of the District of Columbia that court, on May 17 instant, affirmed the decision of the court below. At the same time, however, it ordered that the judgment below be corrected in that the certain certificates should be surrendered before the payment of the interest, and the judgment should make the surrender of them a condition precedent to the payment of interest.

2. The petition for the writ of mandamus recites that one Charles E. Evans (an assignor of your petitioner), during the years 1871 to 1874, inclusive, was carrying on the business of a contractor, laying concrete and brick pavements on sidewalks and on streets and making other improvements on streets and avenues in the city of Washington, and that he carried on said business under the name of "Evans Concrete Company;" that the work done and materials furnished by said Evans was under contracts with the duly authorized officials of the District of Columbia, being with the board of public works of said District, and that the amount due him was a large sum, and much of it remained unpaid on the 1st day of August, 1874.

On the 1st day of August, 1874, certain claims under said contract had been duly submitted for examination and audit in pursuance of the act of Congress entitled "An act for the government of the District of Columbia, and for other purposes," approved June 20, 1874; that said accounts were approved by the board of audit, and after having duly audited the said claims, they were signed and issued for delivery, the two certificates mentioned aforesaid, said certificates being set out in the record, on pages 2 and 3 thereof; that at the time the said certificates were issued claim had been made by the Commissioners of the District of Columbia (the successors of the board of public works) that the said Charles E. Evans was liable for the expense of repairs which were needed on certain portions of the streets laid by him. The petition further alleges that afterwards it appeared that these claims were not well founded; but the said board of audit of the District of Columbia, instead of delivering the said certificates to the said Evans, withheld them and delivered them to the Commissioners of the District of Columbia, and the said Commissioners detained and withheld the certificates from the said Evans, claiming them as collateral security for the payment of their unauthorized claims for repairs to said pavements; that said certificates remained until the 9th day of June, 1880, deposited in a tin box in the office of the Treasurer of the United States, the key of the said box being in the possession of the said Treasurer, who held it and the contents of said box subject to the control of the Commissioners of the District of Columbia. The petition further alleges that prior to the 1st day of January, 1880,

the said certificates had been assigned and transferred to Thomas J. Fisher, a resident of the said District of Columbia, and prior to the 13th day of January, 1881, the Treasurer of the United States had been duly requested to convert the same into 3.65 bonds, in pursuance of the act of Congress dated January 16, 1880, and at divers times, both before and after said 13th day of January, 1881, the said Thomas J. Fisher and his assignees demanded and requested that said certificates be redeemed by issuing in the place thereof 3.65 bonds, as approved in section 9 of the act of June 16, 1880; that the said Treasurer refused each and every time the demand to issue bonds for the said certificates, on the ground solely, as your petitioner is informed and believes, that the Commissioners of the District of Columbia made the claim aforesaid; that thereafter, in December, 1880, the said Thomas J. Fisher, in pursuance of sections 1 and 2 of the act of Congress passed January 16, 1880, chapter 243, commenced an action in the Court of Claims of the United States against the District of Columbia to recover, in addition to a large number of other claims, the amount certified by said certificates of the board of audit mentioned aforesaid; that during the December term, 1889-90, of said court the executors of the said Thomas J. Fisher were, after a suggestion of the death of the said Fisher, made parties to the record, and on the 19th day of June, 1890, the petitioner alleges upon information and belief that an agreement was entered into by the parties interested to dispose of said action by the delivery of the said certificates to the executors of Fisher, and that on the 9th day of June, 1890, the Commission-

ers of the District of Columbia obtained from the said Treasurer of the United States and delivered to the plaintiffs' attorney in said action the said two certificates mentioned aforesaid, and that the said attorney for the plaintiffs took said certificates into his possession, and that thereupon the plaintiffs' attorney presented the said certificates to the Treasurer of the United States and requested him to issue for the said certificates 3.65 bonds; that the Treasurer of the United States *refused and declined to redeem the said certificates* or to issue bonds for the payment thereof or in any way to pay the same unless a judgment of the said Court of Claims, in which the said action upon the said certificates had been brought, should be first entered for his protection; that thereupon a judgment upon the said certificates was entered in the aforesaid action in favor of the defendant.

The petition goes on then to state how the judgments were paid, and it alleges that, prior to the rendition of the said judgment by the said Court of Claims, all claims on the part of the plaintiffs, other than the two certificates, were eliminated from the case, and that judgment was entered in the Court of Claims for the amounts of the two certificates, the pleadings having been amended for that purpose, and that the judgments after ninety days were duly paid by the Treasurer of the United States, with interest at the rate of 3.65 per cent.

Then the petition alleges that the executors of the said Fisher, prior to the payment of the said amount, in pursuance of an order of the supreme court of the District of Columbia, assigned and transferred to Marcus W. Robinson all of the several claims, and that the said



Marcus W. Robinson afterwards assigned the claims to your petitioner, the assignments being marked Exhibits 1 and 2 and set out on pages 8, 9, and 10 of the record.

Then the petition sets out the act of August 13, 1894, and says that the petitioner has applied and presented her claim to the Treasurer of the United States for such residue of the interest upon the amounts of said board of audit certificates and requested payment thereof and *laid all of the facts* before the Treasurer, but that the said Treasurer refused to make the payment on the ground that the said board of audit certificates *had not been redeemed by him or his predecessor*, and a copy of said refusal is set on page 10 of the record. The petition then prays for a writ of mandamus to compel the Treasurer to pay the interest under the act of August 13, 1894.

To this petition the defendant, Ellis H. Roberts, filed a return, in which he stated that the board of audit certificates, so-called, mentioned in said petition *were not redeemed by him or any person holding the office of the Treasurer of the United States at any time*, and that the only moneys paid by any Treasurer of the United States on account of any of the matters or things in said petition mentioned as having relation to the said certificates, or either of them, were paid *upon such judgments of the Court of Claims of the United States as appears by the transcript from the records of the Treasury Department of the said United States, hereto annexed and made part hereof*, and that the defendant has no official knowledge or any official record in his office showing or tending to show upon what claim or claims either of said judgments are based. Then, as part of said return, are set out the

judgments of the Court of Claims and the receipts of the attorney for the payment thereof, which said receipts show that *both of said judgments were paid before there was any assignment made by the executors of Thomas J. Fisher to Marcus W. Robinson.*

To this return the relator filed a demurrer, which alleged that the matters contained in the answer of the defendant, Ellis H. Roberts, were not sufficient in law to bar or preclude the said relator from having or maintaining her aforesaid petition for the writ of mandamus against him. The cause was then heard upon this demurrer, and the court made an order granting the writ of mandamus, which said order is fully set out on pages 14 and 15 of the record.

3. Afterwards, as has been stated, this cause was appealed to the Court of Appeals of the District of Columbia, by which court the judgment of the court below, with the modification mentioned aforesaid, was affirmed. By reason of the affirmance of said judgment as modified the Treasurer of the United States will be compelled to pay money out of the Treasury of the United States under the act of August 13, 1894, although the record filed herewith shows on its face that the relator has no interest in the board of audit certificates and was not the assignor of said board of audit certificates, and that said certificates were never redeemed by the Treasurer of the United States; although, further, the record shows on its face that the answer of said Treasurer is a complete and sufficient answer to the petition for the writ of mandamus and presents a substantial fact which the record shows

has never been tried, and although the record shows that the relator presented no cause that could be corrected by a writ of mandamus. It is therefore insisted that the Supreme Court of the District of Columbia and the Court of Appeals committed error when they decided that the writ of mandamus should issue against said Roberts.

4. The record fails to show that the relator has any interest in the certificates, according to the facts set out in the petition, or that she was ever the owner of the certificates, that she is the holder of them, or who at the present time holds them. If the relator has any right at all, she must claim it as assignee of some former holder of these certificates. The petition shows that in 1890 the certificates were delivered to Fisher, but it fails to show whether they were ever in the possession of his executors, or where they are at the present time; but it does show that Fisher was the assignor of them at the time the judgments were paid, and that at that time there was no assignment on the part of Fisher's executors to any person.

The Government contends that the act of August 13, 1894, in using the word "assignees," means the assignees at the time of the redemption, and not any person who might acquire a general assignment of claims afterwards; and the record in this case shows that Robinson, the party from whom the relator claims, never was the assignee of these certificates, for according to the petition the judgments were paid by the Treasurer of the United

States on September 12, 1890, which said judgments, according to petitioner's own contention, fully settled the claims, and the assignment made by the executors of Fisher was made some time after September 15, 1890, as the assignment itself recites "that the same is made in pursuance of an order of the supreme court of the District of Columbia sitting at a special term for the transaction of probate business on the 15th day of September, 1890."

It is further contended on behalf of the United States, that the certificates set out in the petition were never redeemed by the Treasury of the United States, and therefore are not certificates within the meaning of the act. The act applies only to such certificates as were redeemed by the Treasurer under the act approved June 16, 1880, and the petition itself shows that these certificates were never redeemed and are not now in the possession of the Treasurer of the United States, and the answer of the respondent denies that they were ever redeemed by him or any person whomsoever. The statements made in the petition and answer show that the certificates were never redeemed; but the contention on the part of the relator is that "redeemed" in the act means merely payment, and they, being paid, are to be considered as redeemed. Attention is called, however, to the fact that the acts of Congress on the subject of these certificates first provide for redemption and then for payment, but when the judgments set out as a part of respondent's answer were paid, the Treasurer of the United States was prohibited from paying these certifi-

cates by act of Congress of July 5, 1884 (23 Stats., 131), said act reading as follows :

That no payment shall be made of any certificate issued by the late board of audit of the District of Columbia under authority of the act approved June twentieth, eighteen hundred and seventy-four, that shall not be presented for payment within one year from the date of the approval of this act.

There is no allegation in the petition that these certificates were presented within one year after the passage of the act, and as both petition and answer show that the certificates were not paid, and never have been paid, by the Treasurer of the United States, it is insisted that this is a conclusive answer to the contention that said certificates have been redeemed.

There is, furthermore, nothing in the record to show who has possession of these certificates at the present time, so that if the same should be found in the hands of a third person, or if third persons should claim them, he would be driven to contest their right as well as the right of the relator in the petition for the writ of mandamus.

It is contended that the Court of Appeals of the District of Columbia, when in its opinion it orders that the judgment of the court below be corrected, admits itself that the record in this cause is insufficient upon which to issue a writ of mandamus, because the court itself attempts to settle the disputed point which the Treasurer of the United States had a right to settle—that is, the ownership of the said certificates.

Such being the state of the record, the Supreme Court of the District of Columbia was asked to issue the writ

of mandamus against the Treasurer of the United States to compel him to decide all of the points herein mentioned in favor of the petitioner, and then to compel the payment to the petitioner of a certain sum of money as interest due under the act of August 13, 1894 (28 Stats., 277), which said act reads as follows :

That the Treasurer of the United States is hereby directed to pay to the owners, holders, or assignees of all board of audit certificates redeemed by him, under the act approved June sixteenth, eighteen hundred and eighty, the residue of two and thirty-five hundredths per centum per annum of unpaid legal rate interest due upon said certificates from their date up to the day of approval of said act providing for their redemption.

The contention of the Government is that the above act called upon the Treasurer of the United States to determine who was entitled thereunder to receive payment of interest, and in order to decide this point in the present case the Treasurer of the United States had to determine the effect of the several assignments to the petitioner, what interest, if any, passed under the assignments, and whether or not the word "assignee" means assignee at the time of the redemption or an assignee made after the certificates were redeemed; also, if he decides that "assignee" means the assignee at the time the interest is demanded of him, he is also to inquire if there is a present holder, and what rights, if any, the holder has against the assignee in this case, and he is further to determine if any interest passed to Robinson in these certificates, the judgment of the Court of Claims having been fully satisfied and paid before the assignment, and

there appearing nothing of record to show that these certificates were ever delivered to Robinson.

The Treasurer must also decide that "redeemed," as used in the act, means more than an actual redemption, and he must say that payment of the judgments in the Court of Claims, although there is nothing on their face to show that there is a payment of the certificates, was a payment and redemption of the certificates within the meaning of the act. It is insisted that the court, in deciding this cause, went further and held that there was no discretion in the Treasurer of the United States in deciding these questions, and that he must decide them all in favor of the relator; that he would be compelled to decide that the payment of the judgment was a payment in redemption of the certificates, when he, by the act of July 5, 1884, was prohibited from paying any such certificates.

It is contended on behalf of the Government that when the relator herself asked the Treasurer in this case to decide all of the questions in her favor, and to decide them even contrary to law, she has no standing in court by the writ of mandamus to compel the Treasurer to perform these acts, because these acts are not merely ministerial but call upon him to perform a discretionary and judicial act, and that therefore the writ of mandamus will not lie.

In support of this contention your petitioner refers to pages 12, 13, 14, 15, 16, 17 of the brief filed by your petitioner in the Court of Appeals of the District of Columbia in said case, the same being entitled "No. 792,"

and copies of which are filed with this petition and made part hereof.

This is one of the few cases where a court has by writ of mandamus ordered money to be paid out of the Treasury of the United States. It is contended that to construe the act of August 13, 1894, to apply to all settlements of board of audit certificates whenever the same may have been settled, or where judgments have been rendered against the District of Columbia for work performed by contractors under bond, would result in the payment of large sums of money not included within the meaning of that act, and lead to extensive litigation. It would also result in establishing the proceeding by mandamus as a convenient means of obtaining the payment of claims against the United States.

It is therefore respectfully submitted that the importance of the questions here presented is sufficient to justify this court in issuing its writ of certiorari.

Notice of this application has been given to opposing counsel.

JOHN K. RICHARDS,  
*Solicitor-General.*